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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,627	06/30/2005	Ingo Kalliske	076326-0294	5595
22428	7590	12/11/2008	EXAMINER	
FOLEY AND LARDNER LLP			TO, TOAN C	
SUITE 500			ART UNIT	PAPER NUMBER
3000 K STREET NW			3616	
WASHINGTON, DC 20007				
		MAIL DATE		DELIVERY MODE
		12/11/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,627	KALLISKE ET AL.	
	Examiner	Art Unit	
	TOAN C. TO	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 August 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 42-82 is/are pending in the application.
 4a) Of the above claim(s) 47,48,54,55,57,60-62,67-72 and 74-76 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 42-46,49-53,56,58,59,63-66 and 77-82 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 10 January 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 42-46,49-53, 56, 58-59, 63-66, and 77-82 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasaki (U.S. 6,364,402)

With respect to claims 42-46, Sasaki discloses an automotive safety apparatus for protecting a person located outside an automobile from impact with an external part of the automobile comprising: a device (25) configured to deflect the part of the external paneling (21) of the automobile in a first deflecting direction from a first position (closed position) to a second position (raise position), wherein after the device has deflected the part of the external paneling (21), the deflecting device (25) is configured to oppose and control movement of the part of the external paneling (21), and wherein the deflecting device (25) is configured to control movement of the part of the external paneling (21) in a second direction (movement of the hood 21 in direction of the external force F2) counter to the first deflecting direction based upon the location of the impact; wherein the device (25) permits a movement of the part of the external paneling (21) in the second direction counter to the first deflecting direction only a predetermined time period after the deflection of the part of the external paneling (21); wherein the device is configured to use gas pressure to deflect the part; wherein the device is configured so

that the pressure of the gas (a control section 39 controls the pressure of the gas) is controlled over time to decrease after deflection of the part; wherein the device is configured so that the pressure of the fluid acting on the deflected part of the external paneling (21) is reduced by discharging some of the gas.

With respect to claims 49-50, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) can be triggered pyrotechnically (inherently disclosed).

With respect to claims 51-53, and 73, Sasaki discloses an automotive safety apparatus wherein the deflecting device (25) comprises an element which can be filled with fluid so that when the element (26) is filled the element applies a force to the part, wherein the deflecting device comprises a piston (28) which can apply a force on the part (21), wherein the piston (28) is configured to receive a fluid for extending the piston (28), wherein a movement of the piston counter to the deflecting direction can be triggered only upon an impact against the part within a specified directional region.

With respect to claims 58-59, Sasaki discloses an automotive safety apparatus, wherein the deflecting device includes an elastically or plastically deformable element (21a), wherein the device (25) is configured so that when a person impacts against the part the elastically or plastically deformable element deforms to permit the part to move counter to the deflecting direction.

With respect to claims 63-65, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) is reversible, so that a movement of the part of the

Art Unit: 3616

external paneling (21) counter to the deflecting direction is made possible by a movement of elements of the deflecting device in a direction counter to the deflecting direction, wherein the deflecting device (25) can be moved counter to the deflecting direction only upon the impact of a body part of a person against a predetermined region of the part, wherein the deformable element (21a) can be deformed only after an impact force is applied from a predetermined direction within a predetermined region of the part.

With respect to claim 66, Sasaki discloses an automotive safety apparatus, wherein device includes at least one element (28) configured so that the deflecting device permits a movement of the part of the external paneling (21) counter to the deflecting direction only upon an impact within a specified directional region of the part.

With respect to claims 77-82, Sasaki discloses an automotive safety apparatus, wherein the deflecting device (25) is configured to be activated by a first impact of the person against the vehicle, so that the part of the external paneling (21) of the external paneling is deflected, wherein the device is configured to be activated when the force produced during the impact acts on the deflecting device, wherein the deflecting device (25) is configured to be activated based on a signal of a sensor (38a-38c) coupled to the deflecting device (25); wherein the flap is an engine hood, wherein the application point of the deflecting device (25) is provided in the region of the end of the flap (21) which faces the passenger compartment.

Response to Arguments

3. Applicant's arguments filed August 21, 2008 have been fully considered but they are not persuasive. The prior art still read on the invention as claimed.
4. In response to applicant's arguments that Sasaki discloses a device configured to deflect the hood of an automobile in a first deflecting direction, but Sasaki fails to disclose, teach or suggest a recitation of "after the device has deflected the part of the external paneling, the device is configured to oppose and control movement of the hood of an automobile in a second direction counter to the first deflecting direction based upon the location of impact", the examiner respectfully disagrees because said recitation is considered as an intended used recitation, and the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the device 25 includes a piston 28 which limits a movement of the hood 21 in direction of the external force F2 after impacting with an object 18 in order to avoid damage to the engine; therefore, the piston 28 of the device 25 is considered to be capable of controlling movement of the hood in direction of the external force F2 which counters to the first movement of the hood in direction of the force F1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TOAN C. TO whose telephone number is (571)272-6677. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on (571) 272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Toan C To/
Primary Examiner, Art Unit 3616
December 5, 2008